

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

M.J. KEEFE, as Personal Representative of
The Estate of Rachel Sedillo, deceased,

Plaintiff,

v.

Civil No. 1:14-cv-1166

PRESBYTERIAN HEALTHCARE SERVICES, INC.
d/b/a Socorro General Hospital,
PRESBYTERIAN MEDICAL SERVICES,
d/b/a Socorro Community Health Center,
DOMINADOR GARCIA, M.D.,
SALLY BODENSTEINER, M.D.,
TIMOTHY J. BARRETT, D.O.,
and JOHN DOES 1 THROUGH 6,

Defendants.

NOTICE OF REMOVAL OF ACTION

The United States of America, acting on behalf of Presbyterian Medical Services, Socorro Community Health Center and Dr. Sally Bodensteiner, named defendants in the above-captioned action, hereby gives notice to this Court of the removal of a civil action commenced in the Second Judicial District Court, County of Bernalillo, State of New Mexico, Cause No. D-202-CV-2014-02749. This removal is pursuant to 28 U.S.C. § 2679 (d) (2) which provides that upon certification by the United States Attorney General that the defendant employee was acting within the scope of his/her employment, a civil action proceeding in state court upon such claim shall be removed to the District Court of the United States embracing the place in which the action or proceeding is pending. The United States submits the following:

1. A civil action has been brought in the Second Judicial District Court, State of New Mexico, against Presbyterian Healthcare Services, d/b/a Socorro General Hospital, Presbyterian Medical Services, d/b/a Socorro Community Health Center, Dominador Garcia, M.D., Sally Bodensteiner, M.D., Timothy J. Barrett, D.O., and John Does 1-6 for alleged failure to properly diagnose and treat a gastrointestinal disorder of the decedent, Rachel Sedillo, which Plaintiff alleges resulted in her death on March 2, 2012 (“Amended Complaint”).

2. Defendant Presbyterian Healthcare Services, d/b/a Socorro Community Health Center (“Defendant SCHC”) is a grantee of the Department of Health and Human Services, which is operated by the United States of America. By operation of the Federally Supported Health Centers Assistance Act (“FSHCAA”) (42 U.S.C. § 233(g)-(n)), said Defendant SCHC is covered under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2401(b), 2671-80.

3. Filed with this Notice of Removal is Exhibit 1, a Certification by Damon P. Martinez, United States Attorney for the District of New Mexico, certifying that Defendant Sally Bodensteiner, M.D. was acting within the scope of her employment at the time of the allegations and/or incidents giving rise to this suit. The authority to certify scope of office or employment has been delegated to the United States attorney. See 28 C.F.R. § 15.4.

4. In accordance with 28 U.S.C. § 2679(d) (2), upon certification that the defendant was acting within the scope of her employment with the Government, the action commenced in New Mexico State Court shall be removed to the District Court for the District of New Mexico and such action or proceeding shall be deemed to be an action or proceeding brought against the United States.

5. The Second Judicial District Court action is properly subject to removal under 28 U.S.C. §§ 1441 (a), 1442(a)(1) and 2679(d)(2). Plaintiff asserts in his Amended Complaint for Damages for Wrongful Death Based on Medical Negligence that at all times material to the allegations, the alleged actions by Sally Bodensteiner, M.D. were taken while she was deemed as an employee of the United States Department of Health and Human Services. Plaintiff's allegations appear to be controlled by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., and this is, therefore, an action over which the United States District Court has exclusive jurisdiction.

6. Attached to this Notice of Removal as Exhibit 2 are copies of all pleadings that have been received by and are in the possession of the United States in this action.

WHEREFORE, the United States gives notice that Cause No. D-202-CV 2014-02749 in the Second Judicial District Court for the County of Bernalillo, State of New Mexico, is removed to this Court.

Respectfully submitted,

DAMON P. MARTINEZ
United States Attorney

Electronically filed December 30, 2014

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 30, 2014, I filed the foregoing pleading electronically through the CM/ECF system, which caused the following parties to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

AND I FURTHER CERTIFY that on December 30, 2014, I served the foregoing pleading on the following non-CM/ECF Participants via first class mail, postage prepaid, addressed to:

Corbin Hildebrandt, Esq. and
James Bromberg, M.D., J.D.
1400 Central Avenue SE, Suite 2000
Albuquerque, NM 87106

/s/ Roberto D. Ortega
ROBERTO D. ORTEGA
Assistant United States Attorney